

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION

MPC PACKAGING, INC.

PLAINTIFF

v.

No. 4:98CV124-D-B

JETFILL, INC.

DEFENDANT

OPINION

This cause comes before the court upon the defendant's "Motion to Dismiss, Abate, Stay, or Consolidate." Upon duly considering the aforesaid motion, this court finds that this action should be stayed until the United States District Court for the Southern District of Texas addresses a motion to dismiss filed in a related action. See Jetfill, Inc. v. Mebane Packaging Group, No. 4:98CV1146 (United States District Court for the Southern District of Texas).

Factual Background

The plaintiff, MPC Packaging, Inc. (Mebane), is a North Carolina corporation with its principal place of business in Greenville, Mississippi. The defendant, Jetfill, Inc., is a Texas corporation with its principal place of business in Houston, Texas. In October 1995, Mebane and Jetfill entered into an agreement whereby Jetfill would purchase corrugated packaging products from Mebane for an agreed price. The dispute between the parties is regarding the existence of a modified agreement. Mebane contends that there were certain charges that were separate from the packaging product price, while Jetfill asserts that there was a subsequent agreement to consolidate these charges.

Jetfill filed for declaratory judgment on March 12, 1998, in the District Court of Harris County, Texas, seeking to enforce the alleged modified agreement. On April 16, 1998, Mebane removed the action to the United States District Court for the Southern District of Texas. On the

same day, Mebane also filed an action in the Circuit Court of Washington County, Mississippi, seeking compensatory damages for breach of contract. Jetfill removed that action on June 8, 1998 to this court. Presently before the court is Jetfill's "Motion to Dismiss, Abate, Stay, or Consolidate." In that motion, Jetfill argues that the case sub judice should be dismissed, abated, or stayed in deference to the Texas case or consolidated into the Texas case, in accordance with the first-to-file rule.

Discussion

The Fifth Circuit recognizes the general rule that "the principle of comity requires federal district courts – courts of coordinate jurisdiction and equal rank – to exercise care to avoid interference with each other's affairs." West Gulf Maritime Ass'n v. ILA Deep Sea Local 24, 751 F.2d 721, 728 (5th Cir. 1985). The concern is to avoid the waste of duplication and piecemeal litigation. Colorado River Water Conservation Dist. v. United States, 424 U.S. 800, 817, 96 S. Ct. 1236, 1246, 47 L. Ed. 2d 483 (1976). Where the issues can be resolved in the "first-filed" action, the district court of the "second-filed" action may dismiss, consolidate, or stay the case in accordance with what that court deems appropriate. West Gulf Maritime, 751 F.2d at 728 n.1.

Here, the Texas action was filed first. Therefore, if the claims between the parties can be resolved in the Texas court, this court should defer to the Texas court in accordance with the first-to-file rule. However, it is undetermined whether the United States District Court for the Southern District of Texas has jurisdiction to resolve that claim. Presently before the Texas court is Mebane's Motion to Dismiss which asserts lack of subject matter jurisdiction and improper venue. The ruling on the Motion to Dismiss before the United States District Court in Texas will

determine how this court will proceed over the Mississippi action. Therefore, this court finds it appropriate to stay the present action until the court in Texas rules on Mebane's Motion to Dismiss.

In sum, this court finds that this action should be stayed until the United States District Court for the Southern District of Texas has ruled on Mebane's Motion to Dismiss. A separate order in accordance with this opinion shall issue this day.

THIS the ____ day of September 1998.

United States District Judge

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ORDER GRANTING MOTION TO STAY

Pursuant to a memorandum opinion issued this day, it is hereby ORDERED that:

- (1) the Defendant's "Motion to Dismiss, Abate, Stay, or Consolidate" is GRANTED;
and
- (2) this action is STAYED.

SO ORDERED, this the _____ day of September 1998.

United States District Judge